

STATE OF NEW JERSEY
DEPARTMENT OF LAW AND PUBLIC SAFETY
DIVISION OF CONSUMER AFFAIRS
STATE BOARD OF NURSING

IN THE MATTER OF THE	:	
SUSPENSION OR THE REVOCATION	:	Administrative Action
OF THE CERTIFICATION OF	:	
	:	
Ehrude Joseph	:	
CERTIFICATE NO.26NH11468500	:	FINAL ORDER
	:	
TO PRACTICE AS A	:	
HOME MAKER-HOME HEALTH AIDE	:	
IN THE STATE OF NEW JERSEY	:	

This matter was opened to the New Jersey State Board of Nursing ("Board") by way of an Administrative Complaint, filed with the Board by Jeffrey S. Chiesa, Attorney General of New Jersey, Deputy Attorney General Joshua Bengal appearing, on November 30, 2012. The one count Complaint alleges, among other things, that Respondent slammed the heel of her foot into the top of a patient's foot and pulled her hair. Respondent submitted an Answer in this matter on or about January 23, 2013 denying all substantive allegations.

A hearing was held before the Board on August 5, 2014. Deputy Attorney General Joshua Bengal appeared on behalf of the complainant Attorney General. Pierre I. Eloi, Esq. appeared on behalf of Respondent.

In opening statements, the Attorney General asserted that the proofs would show that Respondent expressed her frustration

with a resident suffering from dementia by stomping with her heel on D.T.'s foot, hitting D.T. on the arm and yanking D.T.'s ponytail. The Attorney General argued that Respondent's actions constitute repeated acts of malpractice, professional misconduct and violations of various regulations.

The Attorney General supported his application with the following documents introduced into evidence:

- P-1 Written Statement of Gloria Molina, Certified Nurse Aide¹
- P-2 Nurse's notes for resident D.T. accompanied by the certification of the executive director and community business director of Atria Cranford.
- P-3 Reportable Event Report maintained by Atria Cranford
- P-4 Certified Statement of Anna Goodman²
- P-5 Human Resource File maintained by Atria Cranford, including written statement of Respondent

Gloria Molina, CNA testified on behalf of the State. Molina is a certified nurse aide and a certified homemaker-home health aide. On January 5, 2011 she was working at Atria Assisted Living in Cranford. She had been working at Atria just a few days. Molina was about 20 feet away from Respondent and D.T. in the dining room at breakfast. She had an unobstructed view of both individuals. She saw Respondent walk past D.T. and

¹ Mr. Eloi objected, arguing that the statement was not written contemporaneous to the time of the incident and is written in English when the witness speaks Spanish. The statement was entered into evidence with the caveat that the Board would give it appropriate weight.

² Mr. Eloi objected, arguing that the affiant is not present at the hearing and available for cross examination. DAG Bengal argued that the notarized document was self-authenticating and also admissible as hearsay under the residuum rule. The document was accepted into evidence.

step on D.T.'s toes and front part of her foot with her heel. D.T. began crying. On a scale of one to ten, the force of the step "was an eight".

Around 10 o'clock, when Molina was in the TV room and D.T. was in the dining room, Molina heard D.T. cry out again. D.T. "would cry and say, my arm, my arm, my arm, and crying for a long time." Molina did not see what happened to D.T.

Molina next saw D.T. around 11:30 AM. She observed Respondent pull D.T.'s hair. On a scale of one to ten, the force of the pull "was a five."

An investigation was conducted by the assisted living facility and Molina gave a written statement (P-1). She read and dated the statement on the day she gave it, then signed and dated it again in August when requested to do so by an investigator from the Board of Nursing. The written statement was consistent with her verbal testimony before the Board.

On cross examination, Molina confirmed that she reviewed and signed her written statement on the day of the incident.³ She did not believe Respondent accidentally stepped on D.T.'s foot - somebody told her it was because Respondent was angry at D.T. Molina did not confront Respondent and did not report the

³ Molina's testimony regarding the date she first reviewed and signed the statement was somewhat inconsistent. However, a comprehensive review of her testimony, the Cranford Police Department Investigation Report (P-3 in evidence) and the document itself (which indicates the events happened "today at breakfast") are sufficient for the Board to conclude that Molina reviewed and signed her written statement close in time to the events at issue.

incident because she doesn't like "having problems." Molina confirmed that she did not see Respondent hurt D.T.'s arm but she did see her pull D.T.'s hair.

At the conclusion of his case, DAG Bengal moved to conform the pleadings to the proofs, specifically to amend the pleadings to include the allegation that Ms. Joseph did, in fact, injure D.T. in the arm. Respondent's attorney argued that the amendment should not be allowed, as the complaint could have been amended at any time over the last year. The Board granted the motion to amend, noting that

pleadings may be freely amended when, in the judge's discretion, an amendment would be in the interest of efficiency, expediency and the avoidance of over-technical pleading requirements and would not create undue prejudice

N.J.A.C. 1:1-6.2⁴

The Board determined that no undue prejudice would result in this amendment as the allegations to be included by the proposed amendment occurred on the same day and with the same resident and all documentary evidence relied upon in support of the amendment was provided to Respondent approximately a year ago.

In closing arguments, DAG Bengal urged the Board to suspend or revoke Respondent's certification. He argued that

⁴ New Jersey Court Rule 4:9-2 similarly states that the pleadings should be amended "freely when the presentation of the merits of the action will be thereby subserved and the objecting party fails to satisfy the court that the admission of such evidence would be prejudicial in maintaining the action or defense upon the merits."

Respondent has shown through abuse of a woman who was suffering from dementia that she is not fit to hold a certification to practice as a homemaker-home health aide. Ms. Molina saw Respondent walk by D.T. and stomp on her foot. Another witness saw Respondent in the area when D.T. yelled out that her arm hurt. (P-4 in evidence). Red marks were found on D.T.'s foot and arm. (P-3 in evidence). DAG Bengal also noted that Respondent has not challenged the allegation that she pulled D.T.'s hair other than to deny the allegation. She does not deny being present.

In his opening statement, counsel for Respondent argued she was never assigned to provide care to patient D.T., she did not cause injury to D.T. and the allegations against her are fabricated.

Respondent testified on her own behalf. Respondent was working as a certified homemaker-home health aide at Atria on January 5, 2011. She was not assigned to care for D.T. on that date, but she saw her walking around. D.T. has Alzheimer's so everyone kept an eye out to make sure she was safe and didn't eat something inappropriate (gloves, leaves, flowers, etc). Respondent does not remember stepping on D.T.'s foot and did not purposely step on D.T.'s foot, but acknowledges that she may have done so accidentally. Later that morning, Respondent heard

D.T. calling "my arm, my arm" and "she hit me." When Respondent went to check on her, D.T. told Respondent "she hurt me" but could not identify who was responsible and Respondent did not see who hit D.T.'s arm. Respondent did not hear D.T. say "my hair." Respondent denied pulling D.T.'s hair - she testified that she is a homemaker-home health aide to care for patients, "I'm not there to beat them."

Respondent described an interchange with Molina on January 5, 2011 during which she perceived Molina's demeanor was such that Molina felt Respondent was trying to be her boss. Molina told her, "don't tell me what I have to do. I know my - - I know my job."

On cross-examination Respondent confirmed that D.T. ate non-food items, played in the dishwasher and engaged in other inappropriate conduct. If Respondent saw her doing these things part of her job was to stop her, even when she was not "assigned" to provide care to her. Respondent testified that she was not "mad" at D.T. and was not "mad" at Molina. She was doing her job.

In closing arguments Mr. Eloi argued that the State did not prove that Respondent mistreated, neglected or abused D.T. He asked the Board to find Respondent's testimony to be credible. He noted that there was a certified nurse aide who may have

witnessed D.T.'s injuries that did not testify or submit a statement. He further argued the testimony of Gloria Molina was not conclusive as there was no corroborating testimony and Ms. Molina testified, as to D.T.'s arm injury, regarding only what she heard.

FACTUAL FINDINGS AND CONCLUSIONS OF LAW

The Board found Molina's testimony credible including observations that Respondent stepped on the patient's toes and foot and pulled her hair. It was supported by her own statement created close in time to the event and corroborated by nurses notes (P-2 in evidence) indicating an allegation of abuse followed by observation of red marks on the top of the patient's foot and on her arm accompanied by pain. The affidavit of Ena Gooden confirms that she reported the allegation that Respondent hit patient D.T. after hearing D.T. cry out "she hit me, she hit me" after Respondent told her to stop touching "the machine." (P-4 in evidence). These statements and evidence taken together are more convincing than Respondent's testimony and show by a preponderance of the evidence that Respondent yanked D.T.'s hair and stepped with great force on D.T.'s foot causing it to become red. Therefore, Respondent has engaged in professional misconduct in violation of N.J.S.A. 49:1-21.

However, the Board found that the Attorney General did not

prove, by the preponderance of the evidence presented, that Respondent injured patient D.T.'s arm. It appears that there were no eyewitnesses to this incident and D.T. was unable to identify the individual who allegedly injured her arm.

PENALTY HEARING

Immediately following the Board's announcement of its determination that cause for discipline had been found, the Board proceeded to a hearing for determination of sanctions in this matter.

In mitigation of penalty, Respondent's counsel asked the Board to be lenient and submitted a copy of Respondent's 2013 tax returns (accepted into evidence as Exhibit R-1 - showing her income of \$32,368) and counsel asserted that she is the sole provider for one dependent.

DAG Bengal submitted Respondent's human resource file into evidence as P-5 to show that she completed training programs pertaining to care of the elderly and care of people with dementia. He requested that the Board consider that her treatment of D.T. was in contravention of this training when considering a penalty. DAG Bengal also submitted a certification of costs incurred by the Acting Attorney General in the prosecution of this matter.

In determining an appropriate penalty the Board considered

that the patient does not appear to have been badly injured by Respondent's inappropriate actions. The Board also considered that Respondent has no prior discipline with this Board and that during her testimony she seemed to sincerely understand now that hurting a patient is never acceptable. Finally, the Board closely examined the financial statements provided by Respondent.

Ultimately the Board determined that a formal reprimand and successful completion of an anger management class would be sufficient discipline and deterrence and determined not to impose costs or penalty.

ACCORDINGLY, it is on this 21st day of ^{November} ~~October~~ 2014

ORDERED, as announced orally on the record on August 5, 2014:

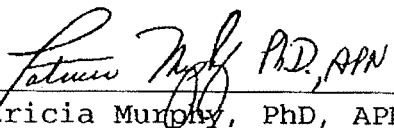
1. Ehrude Joseph, CHHA is reprimanded for professional misconduct as discussed above.

2. Respondent shall fully attend and successfully complete, at her own expense, an anger management course pre-approved by the Board. Successful completion means that all sessions were attended, all assignments were properly and appropriately completed, and a passing grade was achieved which was unconditional and without reservations. Respondent shall submit to the Board documentation of the successful completion of said course on or before May 1, 2015.

3. Respondent's certification will be subject to the entry of an Order of Automatic Suspension of license without notice, upon the Board's receipt of any information which the Board in its sole discretion deems reliable that Respondent has failed to timely complete the anger management course described herein. Such suspension shall continue until such time as Respondent provides documentation of completion of the course as provided in paragraph #2 above. Respondent shall have the right to apply for removal of the automatic suspension on five (5) days notice but in such event shall be limited to a showing that the information submitted was false.

NEW JERSEY STATE BOARD OF NURSING

By:


Patricia Murphy, PhD, APN, FAAN
Board President